

AMENDED IN SENATE JUNE 15, 2004
AMENDED IN ASSEMBLY MARCH 11, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1884

**Introduced by Assembly Member Spitzer
(Coauthor: Assembly Member Harman)**

February 5, 2004

An act to amend Section 633 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1884, as amended, Spitzer. Privacy offenses: immunity.

With the consent of the district attorney of the county, existing law authorizes the city attorney of any general law city or chartered city within the county to prosecute any misdemeanor committed within the city arising out of violation of state law. Existing law provides in any case in which the district attorney is granted any powers or access to information with regard to the prosecution of misdemeanors, this grant of powers or access to information shall be deemed to apply to any other officer charged with the duty of prosecuting misdemeanor charges in the state, as authorized by law. Existing law provides that the Attorney General, district attorney, or other specified law enforcement officers are not prohibited from overhearing or recording any communication that they could lawfully overhear or record prior to the enactment of specified prohibitions on the eavesdropping on, or recording of, specified communications.

This bill would explicitly state that city attorneys prosecuting on behalf of the people of the State of California under the above-described

authority *as of January 1, 2005*, have the same authority to record and use communications *when investigating violations of consumer protection laws* as has any district attorney as provided in the law described above.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 633 of the Penal Code is amended to
2 read:

3 633. (a) Nothing in Section 631, 632, 632.5, 632.6, or 632.7
4 prohibits the Attorney General, any district attorney, or any
5 assistant, deputy, or investigator of the Attorney General or any
6 district attorney, any officer of the California Highway Patrol, any
7 chief of police, assistant chief of police, or police officer of a city
8 or city and county, any sheriff, undersheriff, or deputy sheriff
9 regularly employed and paid in that capacity by a county, police
10 officer of the County of Los Angeles, or any person acting
11 pursuant to the direction of one of these law enforcement officers
12 acting within the scope of his or her authority, from overhearing
13 or recording any communication that they could lawfully overhear
14 or record prior to the effective date of this chapter.

15 Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders
16 inadmissible any evidence obtained by the above-named persons
17 by means of overhearing or recording any communication that
18 they could lawfully overhear or record prior to the effective date
19 of this chapter.

20 (b) ~~A—~~*This subdivision shall apply only to a city attorney*
21 *prosecuting on behalf of the people of the State of California under*
22 *Section 41803.5 of the Government Code* ~~has~~ *as of January 1,*
23 *2005. These city attorneys have the same authority to record and*
24 *use communications when investigating violations of laws that*
25 *protect consumers in their interactions in the marketplace for the*
26 *furnishing of goods and services* as has any district attorney
27 pursuant to subdivision (a).

